

**Supplemental Specification
2005 Standard Specification Book**

SECTION 00120

BIDDING REQUIREMENTS AND CONDITIONS

Delete Section 00120 in its entirety and replace with the following:

PART 1 GENERAL

1.1 RELATED SECTIONS

- A. Section 01455: Material Quality Requirements

1.2 REFERENCES

- A. Sherman Antitrust Act
- B. United States Department of Treasury Circular
- C. Utah Administrative Code

1.3 PREQUALIFYING BIDDERS

- A. Meet Department requirements for prequalification before submitting a proposal on all projects where the Department Engineer's advertised Estimate is greater than or equal to \$1,500,000.
 - 1. Submit prequalification information at least 10 calendar days before submitting a proposal on projects requiring prequalification.
- B. Prequalify at least once each year.
 - 1. The Department may change a bidder's prequalification status at any time based upon the submission of additional favorable reports or evidence of unsatisfactory performance.
 - 2. The prequalification amount limits bidding to individual contracts of a given size or for a particular type of work.

- C. Provide experience information on the Contractor's Application for Prequalification and a confidential financial statement attested to by a certified public accountant.
 - 1. Include a complete report of the bidder's financial resources and liabilities, equipment, work history, and personnel. The Department establishes prequalification amount and work classification.

1.4 BIDDING DOCUMENTS

- A. Prequalified bidders must acquire and submit all proposals in the identical name used on their prequalification statement, or in accordance with a filed affidavit of change in firm name or ownership.
- B. Obtain bidding documents and instructions from the UDOT website. Refer to this Section, article 1.10.

1.5 JOINT VENTURE BIDDING

- A. Before submitting a joint proposal on a single project, and at least four working days before the bid opening, submit a letter of intent to the Department's Prequalification Board Secretary indicating the exact name of the joint venture and the designated administrative partner. The Department will consolidate individual prequalification amounts for the joint venture bid.
 - 1. Obtain the following under the joint venture designation before bid opening:
 - a. Contractor license
 - b. Bid bond
 - c. Bid vault certificate
 - d. UDOT Contractor identification, password, and electronic signature

1.6 PROPOSAL CONTENT

- A. The Department's proposal will state or include the following:
 - 1. Project location and description.
 - 2. Estimate of various item quantities and materials to be furnished.
 - 3. Schedule of items for unit bid pricing.
 - 4. Time for completing work.
 - 5. Proposal guaranty amount.
 - 6. Date, time and place of bid opening.
 - 7. Basis for proposal comparison, if it is other than total cost.
 - 8. Contract requirements not contained in the standard specifications.
 - 9. DBE requirements, when applicable.

10. Date, time, and location for Mandatory Pre-bid Conference, when applicable.
- B. The Department considers all documents designated in the proposal as part of the proposal.

1.7 INTERPRETING PROPOSAL QUANTITIES

- A. Submit unit bid prices for the estimated quantities.
 1. Quantities may increase, decrease, or be eliminated under the contract.
 2. The Department pays for actual quantities of work performed and accepted, and materials furnished under the contract.

1.8 BUY AMERICA REQUIREMENTS

- A. Refer to Section 01455.

1.9 EXAMINATION OF DOCUMENTS AND WORK SITE

- A. Carefully examine the contract documents and perform a reasonable site investigation before submitting a proposal.
 1. The bidder is responsible for all site conditions that should have been discovered had a reasonable site investigation been performed.
 2. A reasonable site investigation includes investigating the project site, borrow sites, hauling routes, and all other locations related to the performance of the work.
 3. Submitting a proposal is considered an affirmative statement that the bidder has examined the contract documents and project site, investigated the nature and location of the work, and is satisfied as to the character, quality, and general and local conditions to be encountered that can affect the work or its cost and the requirements of the proposed contract, including, but not limited to:
 - a. Conditions bearing upon transportation, disposal, handling, and storage of materials.
 - b. The availability of labor, water, electric power, and roads.
 - c. Uncertainties of weather, river stages, irrigation channel flow, lake and reservoir levels, or similar physical conditions of the ground.
 - d. The type of equipment and facilities needed preliminary to and during work performance.
 - e. The character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is ascertainable from an inspection of the site, as well as from the drawings and specifications and all exploratory work made available by the Department.

- B. All Department boring logs and other records of subsurface investigations are available for information purposes only and are not substitutes for the bidder's own investigation, interpretation, and judgment. It is understood such information was obtained and used for Department design and estimating purposes only.
- C. The bidder is permitted to converse with Department personnel knowledgeable of the project, plans, specifications, materials sites, or conditions generally prevailing in the area of the proposed work to aid in pre-bid investigations.
 - 1. The Engineer is available by appointment.
 - 2. The Department is bound only by written statements, representations, or descriptions of conditions and work. No oral explanations or instructions are binding.
- D. Request explanations of the written proposal documents by contacting the Engineer 14 calendar days before bid opening to allow a reply before proposal submission.
 - 1. The Department responds to requests to all prospective bidders by certified letter or electronic communication before the specified time for bid opening.
- E. Immediately notify the Department of any apparent error, omission or ambiguity in the bid package.
- F. Failure to take the actions described and acknowledged in this article does not relieve the Contractor of the responsibility for estimating the difficulty and cost of successfully performing the work, or from proceeding to successfully perform the work without additional cost to the Department.

1.10 PREPARING THE PROPOSAL

- A. Obtain UDOT's current version of the Electronic Bid System (EBS) from the UDOT website. Refer to <http://www.udot.utah.gov/main/f?p=100:pg:2229786104579395766:::1:T,V:719>.
 - 1. Contact the UDOT Construction Division for Contractor ID and EBS training.
- B. Prepare and electronically submit proposals using the Department's current EBS before the specified bid opening date and time.
 - 1. Complete all electronic bid documents specified on the Bid Submission Check List and Forms.
 - 2. Confirm receipt of addenda.
- C. When the proposal permits a choice of alternate items, indicate the choice in the EBS. The program will not permit an additional choice.

- D. Save electronic bid documents until the contract has been awarded.
- E. Provide the name and address of the individual signing the proposal as well as the following names and addresses, as applicable.

Table 1

Individuals Signing Proposal	
Type of Bidder	Names and Office Addresses Required
Individual	Individual and Post Office address
Partnership	Each Member of the Partnership and each Post office address
Joint Venture	Each Member or officer of Firms represented and each post office address
Corporation	Corporation Name and corporate address

- F. By signing the Bid Report (electronically or manually), bidders certify they understand and are in compliance with all terms and conditions of the contract.

1.11 CERTIFYING NON-COLLUSIVE BIDDING

- A. Each bidder and each person signing on behalf of any bidder certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
 - 1. The prices in the proposal have been arrived at independently without collusion, consultation, communication, or agreement with any other bidder or competitor for the purpose of restricting competition.
 - 2. Unless required by law, the prices that have been quoted in the proposal have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening.
 - 3. No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a proposal for the purpose of restricting competition.
 - 4. The named Contractor has not, whether directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action to restrain free competitive bidding in connection with this proposal.
- B. The Department will not consider a proposal for award, nor will it make any award where there has not been compliance with this article, except as follows:
 - 1. If the bidder cannot make the foregoing certification, the bidder must furnish with the proposal a signed statement that describes in detail the reasons why the certification cannot be made.

2. The Executive Director, or designee, determines that such disclosure was not made for the purpose of restricting competition.
- C. Any of the following does not constitute a disclosure within the meaning of this Section, article 1.11, paragraph A1:
1. A bidder has published price lists, rates, or tariffs covering items being procured.
 2. A bidder has informed prospective customers of proposed or pending publication of new or revised price lists for such items.
 3. A bidder has sold the same items to other customers at the same prices being bid.
- D. A proposal made by a corporation is considered authorized by the board of directors of the bidder. Authorization is defined as signing and submitting the proposal, and includes the declaration of non-collusion on the part of the corporation.
- E. UTAH DEPARTMENT OF TRANSPORTATION NON-COLLUSIVE BIDDING CERTIFICATION
- “I declare under penalty of perjury under the laws of the United States and the State of Utah that neither I, nor to the best of my knowledge any member or members of my firm or company have either directly or indirectly restrained free and competitive bidding on this project by entering into any agreement, participating in any collusion, or otherwise taking any action unauthorized by the Utah Department of Transportation, with regard to this Contract.”
- F. Signing the Bid Proposal (manually or electronically) certifies compliance with all provisions of this Non-Collusive Bidding Certification.

1.12 ACCEPTANCE OF PROPOSALS

- A. The Department reserves the right to disqualify a bidder as non-responsive or refuse a proposal for any of the following reasons:
1. Proposal does not acknowledge receipt of addenda.
 2. Award of additional work could impede or prevent timely completion of work currently under contract.
 3. Failure to pay or settle all outstanding labor and material bills or claims for a contract current at the time the proposal is issued.
 4. More than one proposal for the same work is submitted from an individual, firm, or corporation under the same or different names.
 5. Default under previous contracts.
 6. Unsatisfactory performance on previous or current contracts
 7. Debarment by the Department, any State, or the Federal Government.

8. Serious misconduct that adversely affects the ability to perform future work.
 9. Failure to reimburse the Department for monies owed on any previously awarded contract, including any contract where the prospective bidder was a party to a joint venture that failed to reimburse the Department.
 10. Bid Guaranty received after date and time specified.
 11. Non-attendance of a mandatory pre-bid meeting.
 12. Proposal received after date and time for bid opening.
 13. Manually submitted delivered diskette is blank or unreadable.
 14. Proposal not submitted using UDOT's current EBS program.
- B. If the Department refuses to accept a proposal for any of the foregoing reasons, the bidder may appeal in writing to the UDOT Deputy Director pursuant to administrative rules regarding administrative procedures and appeals as set forth in Utah Administrative Code R907-1, as amended.

1.13 IRREGULAR PROPOSALS

- A. The Department considers a proposal irregular and rejects the proposal as non-responsive if:
1. Not properly signed.
 2. The Contractor is not prequalified or there is an insufficient amount of prequalification or unauthorized work classification.
 3. Unauthorized additions, conditional or alternate bids, or other irregularities make the proposal incomplete, indefinite, or ambiguous.
 4. Added provisions reserve the bidder's right to accept or reject an award, or to enter into a contract following award.
 - a. This does not exclude a proposal limiting the maximum gross award amount acceptable to any one bidder at any one bid letting. The Department selects which contracts to award.
 5. It lacks required bid documentation escrow, when applicable.
 6. Noncompliant with any prequalification regulations.
 7. It fails to furnish a properly executed proposal guaranty in accordance with this section.
 8. There is evidence of collusion among bidders.
 9. The proposal does not comply with conditions of current special provision for certification of Affirmative Action (DBE).
 10. It omits a unit price for any estimated pay item, except for authorized alternate bid items.
 11. It is materially unbalanced.
 12. The proposal does not have a Status of Work Under Contract if required, reflecting the Contractor's current prequalification status or:
 - a. Is incomplete and improperly executed.

- b. The sum of the amount of all uncompleted work plus the estimate of the amount of work bid exceeds the amount for which the Contractor is prequalified.
- 13. The proposal fails to meet any other material requirement of the invitation for bids.

1.14 PROPOSAL GUARANTY

- A. Provide a proposal guaranty in the form an electronic guaranty bond, or provide evidence of securing a cashier's or certified check, for not less than 5 percent of the total amount of the bid made payable to the Utah Department of Transportation and issued from a surety company listed on the United States Department of Treasury Circular 570 before the specified date and time for bid opening.
 - 1. Use UDOT approved surety clearing house for electronic guaranty bond.
 - 2. Use current version of the UDOT EBS program.
 - 3. Apparent low bidder delivers proposal guaranty in the form of cashier's or certified check within three calendar days of bid opening.

1.15 PROPOSAL DELIVERY

- A. Electronically transmit the proposal before the time specified in the Notice to Contractors.
- B. A manually delivered proposal takes precedence over an electronically delivered proposal.

1.16 WITHDRAWAL OR REVISING PROPOSALS

- A. A proposal may be withdrawn or revised before the time set for receiving proposals.
- B. Provide the request for withdrawal to the Department with a telephone call followed by documented electronic communications including a company authorized signature and the UDOT Contractor ID before the time set for receiving proposals.

1.17 COMBINATION OR CONDITIONAL PROPOSALS

- A. Proposals may be issued for projects in combination or separately.
 - 1. Proposals may be submitted either on the combination or on separate units of the combination.

2. The award of combination proposals or separate proposals is made to the advantage of the Department.
 3. The Department will consider only proposal combinations that it specifies.
 4. The Department writes separate contracts for each individual project included in the combination.
- B. The Department considers conditional proposals only when specified in the advertisement.

1.18 PUBLIC OPENING OF PROPOSALS

- A. Proposals will be downloaded from the third party repository and publicly opened at the time indicated in the invitation for bids.

1.19 DEBARMENT

- A. The Department may debar a Contractor from performing any work on Department or Department administered projects if:
1. The Contractor or an affiliate (defined as an owner, director, manager, officer or fiscal agent of the Contractor) has been convicted of or entered a plea of guilty or *nolo contendere* to a bid-related or a contract-related crime in any Court of competent jurisdiction.
 2. The Contractor or an affiliate has made a public admission of any bid-related or contract-related crime.
 3. The Contractor or an affiliate has falsified information or submitted deceptive or fraudulent statements in connection with prequalification, bidding, or performance of a contract.
 4. The Contractor or an affiliate has violated relevant antitrust laws covering bid rigging, collusion or restraint of free competition among contractors; (Violations covered by the Sherman Antitrust Act, 15 U.S.C. 1, *et seq.* and Title 76, Chapter 10, Section 911, *et se.*, U.C.A. 1953, as amended).
 5. The Contractor or an affiliate has demonstrated willful wrongdoing reflecting a lack of integrity in bidding or performing public projects.
 6. The Contractor, joint venturer, stockholder of 5 percent or more of the contract, an affiliate, or any immediate relatives of the aforementioned, has been debarred or affiliated with another debarred person or contractors by the Federal Government or by another State government.
 7. The UDOT Deputy Director has reasonable grounds to believe and finds that the Contractor has acted in collusion with others to perform work on a project that supposedly satisfies disadvantaged business enterprise goals or requirements through other than *bona fide* disadvantaged business entities in any combination of individuals, firms or corporations.
 8. The Contractor or affiliate has defaulted under previous contracts.

9. The Contractor or affiliate has unsatisfactory performance on previous work or current contract(s) consisting of, but not limited to:
 - a. Noncompliance with contract.
 - b. Failure to complete work on time.
 - c. Instances of substantial corrective work before acceptance.
 - d. Instances of completed work that requires acceptance at reduced pay.
 - e. Production of non-specification work or materials, and when applicable, required price reductions or corrective work.
 - f. Failure to provide adequate safety measures and appropriate traffic control that endangered the safety of the workforce and public.
10. The Contractor or an affiliate has questionable moral integrity as determined by the Department, the Attorney General of Utah or the Attorney General of the United States.
11. Failure to reimburse the State for monies owed on any previously awarded contract including those where the prospective bidder is a party to a joint venture and the joint venture has failed to reimburse the State for monies owed.
12. The UDOT Deputy Director has reasonable grounds to believe and finds that the public health, welfare or safety imperatively requires such action.

1.20 STATUS PENDING DEBARMENT

- A. The Contractor notified of proposed debarment as provided above is not permitted to contract with the Department, nor act as a subcontractor unless a request for either an informational or formal hearing is pending.
 1. However, if the Department's Deputy Director believes there is probable cause that a Contractor has engaged in activity that would, if true, lead to debarment under Utah Admin. Code R907-67-1, the Deputy Director may suspend the Contractor from consideration for award of contracts.
 - a. A contractor who is suspended may not submit a bid on any Department proposals, nor act as a subcontractor for the duration of suspension.
 - b. The duration of the suspension is for the greater of:
 - 1) Three months
 - 2) The duration of the Contractor's appeal
- B. The proposed debarment period does not begin until the Department decision has been issued following the said hearing or hearings.

1.21 LENGTH OF DEBARMENT

- A. Debarment is for a term of not less than six months and up to three years as determined by the Deputy Director.

- B. The Department may adjust the period of debarment for mitigating circumstances including but not limited to the following:
 - 1. Degree of culpability.
 - 2. Restitution of damages to the State.
 - 3. Cooperation in the investigation of other bidding crimes.
 - 4. Disassociation with those involved in bidding crimes.
 - 5. Protection of the State that may be required.
 - 6. If such action would have unintended adverse consequences on competition.
- C. Debarment in no way affects the obligation of a Contractor to the Department to perform under existing contracts.
- D. The Department also reserves the right to declare a debarred Contractor in default on any existing contracts for adequate cause as provided in such contracts.

1.22 DEBARMENT PROCEDURES

- A. The procedure described in this Section, article Debarment applies if it is found that a Contractor or an affiliate thereof is violating the prohibited activities.
- B. The Director for Construction and Materials notifies the Contractor in writing and by certified mail of the Department's intention to debar. Written notice specifies:
 - 1. The grounds for such intended debarment.
 - 2. The date debarment becomes effective and the intended period of debarment.
 - 3. The procedure to follow if the Contractor desires to challenge the debarment or to offer information to the Department in mitigation of its alleged actions.
- C. Within 15 calendar days of receiving the notice of intended debarment, the Contractor may request either:
 - 1. An investigative hearing before the Director for Construction and Materials.
 - 2. An informal administrative hearing before the UDOT Deputy Director.
- D. The Contractor who elects to proceed at an investigative hearing has the opportunity to appear at a mutually agreed upon time and location.
 - 1. The Contractor may supply information in support of their position and has the opportunity to review the Department's evidence, present evidence, and discuss matters informally.
 - 2. No legal counsel is permitted for either party at the informal hearing.

- E. The UDOT Deputy Director of Transportation or designee conducts the informal administrative hearing with assistance from Department staff as required. The Contractor who appears may be represented by counsel and has the opportunity to review the Department's evidence, and to present evidence in rebuttal either by sworn affidavit or by sworn testimony.
- F. Following either hearing, the Department representative conducting the hearing issues a written decision no later than 30 calendar days following the hearing.
- G. If the Director for Construction and Material's decision is to be appealed, the Contractor files notice in writing with the UDOT Deputy Director within 20 calendar days after receiving the decision from the Director for Construction and Materials. The Deputy Director then schedules a formal hearing as specified above.
- H. The decision of the UDOT Deputy Director following an informal hearing is administratively final and specifies the facts justifying the Department's actions and conclusion.

PART 2	PRODUCTS	Not used
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PART 3	EXECUTION	Not used
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END OF SECTION